

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE

SHAWN SMITH, )  
 )  
Petitioner, )  
 )  
v. ) Nos.: 3:10-CR-110-TAV-HBG  
 ) 3:13-CV-631-TAV  
UNITED STATES OF AMERICA, )  
 )  
Respondent. )

**ORDER**

Before the Court now is the Report and Recommendation of Magistrate Judge H. Bruce Guyton, entered on January 11, 2017 [Doc. 536] (the “R&R”), which addresses an evidentiary hearing in relation to Petitioner’s § 2255 motion [Doc. 414]. In the R&R, Judge Guyton recommends that the Court accept Petitioner’s request to withdraw his § 2255 motion in its entirety, and dismiss the § 2255 motion with prejudice. He also recommends that no certificate of appealability issue for this case because Petitioner is no longer pursing his constitutional claims of the ineffective assistance of counsel.

There have been no timely objections to the R&R, and enough time has passed since the filing of the R&R to treat any objections as having been waived. *See* 28 U.S.C. § 636(b)(1); Fed. . Civ. P. 72. The R&R states that the Petitioner filed a written motion to withdraw his claim that his trial attorney failed to file a requested appeal [Doc. 534]. At the hearing on that motion, Petitioner made an oral motion to withdraw as well all other claims raised in his § 2255 motion. After careful review of the matter, the Court is in agreement with Magistrate Judge Guyton’s recommendations, which the Court adopts

and incorporates into its ruling. Accordingly, the Court **ACCEPTS IN WHOLE** the R&R [Doc. 536]. The Court accepts Petitioner's withdrawal of his § 2255 motion in its entirety, the Motion to withdraw claim [Doc. 534] is **GRANTED**, and the § 2255 motion [Doc. 414], in it entirety, is hereby **DISMISSED WITH PREJUDICE**. The Court **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, this Court **DENIES** Petitioner leave to proceed *in forma pauperis* on appeal. *See* Fed. R. App. P. 24. Petitioner having failed to make a substantial showing of the denial of a constitutional right, a certificate of appealability **SHALL NOT ISSUE**. 28 U.S.C. § 2253; Fed. R. App. P. 22(b). The Clerk of Court is **DIRECTED** to **CLOSE** Case No. 3:13-CV-631.

**IT IS SO ORDERED.**

s/ Thomas A. Varlan  
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT

s/ Debra C. Poplin  
CLERK OF COURT